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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,335	11/19/2001	Richard L. Pellegrini	106679.01	8588

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EXAMINER

BROWN, MICHAEL A

ART UNIT PAPER NUMBER

3764

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/988,335

Applicant(s)

PELLEGRINI ET AL.

Examiner

Michael Brown

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 1-23, 41-44 and 46-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 24-40, 45 and 50 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3-11-02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of claims 1-50, in the reply filed on November 1, 2004 is acknowledged. The traversal is on the ground(s) that the election was made improper. This is not found persuasive because the election was set forth based on different embodiments, claims and figures in the drawings.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24-25, 34 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Langley.

Langley discloses in figures 1-5 a disposable eye patch comprising a sheet member 10 and a metallic layer 12 that does not overlap a peripheral portion of the sheet (fig. 5). The metallic material is aluminum.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-33, 35-39, 45 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langley in view of Krupnick, along with Arnold.

Langley discloses in figures 1-5 a disposable eye patch, substantially as claimed. However, Langley does not disclose an adhesive layer around the peripheral portion of the sheet, the same dimensions recited in the claims or the metallic material being pure aluminum, aluminum alloy, copper, pure metal, a metal alloy or the eye patches being in a roll. Krupnick teaches in figure 1-3 an eye patch comprising a sheet 24 having an adhesive 30 applied over at least the peripheral edge of the sheet. The eye patches are in are in a strip. Arnold teaches in figure 6 putting eye patches 10 in a dispenser roll 16. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the adhesive as taught by Krupnick could be substituted for what appears to be two adhesive strips disclosed by Langley because either adhesive could be used to hold the eye patch over the socket of the eye. The eye patches could be placed into a dispenser roll as taught by Arnold in order to store them until it is time to use one. The sheet and the metallic layer could be made of the same thickness as the dimensions recited in the claims, because the dimensions don't provide any novelty over the prior art. The metallic material could be any of the metallic materials recited in the claims because each material is old and well known. The foam material could be a plastic foam because plastic foams are biocompatible and don't cause any harm to sensitive tissue, such as tissue around the eye.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. No additional prior art was cited during the first office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown
April 7, 2005


MICHAEL A. BROWN
PRIMARY EXAMINER